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Attorney for Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AARON HICKS,

Defendant.

NO. 3:93-cr-0002-04-HRH

**AARON HICKS' MOTION TO
CONTINUE RESENTENCING
AND REQUEST FOR AN
UPDATED PRESENTENCE
REPORT**

(Filed on Shortened Time)

COMES NOW THE DEFENDANT, AARON HICKS, by and through counsel Rich Curtner, Federal Defender, and moves this court for an order continuing his resentencing, currently scheduled for April 26, 2007, for at least 72 days, at a date and time convenient to the court. The purpose of this continuance is for the preparation of an updated presentence report, and a sentencing procedure in which Mr. Hicks will have the opportunity to challenge the factual and legal findings of the presentence report at a sentencing hearing.

This case was remanded by the Ninth Circuit Court of Appeals for a “Post-*Booker*” resentencing. *United States v. Hicks*, 472 F.3d 1167 (9th Cir. 2007). The Ninth Circuit stated that the resentencing “still results in the judge calculating a new Guideline range, considering the § 3553(a) factors, and issuing a new sentence based on the Guidelines.” 472 F.3d at 1171.

The Ninth Circuit has provided guidance as to the application of advisory guidelines to a “Post-*Booker*” sentencing. In *United States v. Zolp*, 479 F.3d 715, 721, the Court of Appeals stated:

Even though *United States v. Booker* rendered the guidelines advisory, as part of its sentencing analysis under 18 U.S.C. § 3553(a), “the district court must calculate the guidelines range accurately. A misinterpretation of the guidelines by a district court effectively means that the district court has not properly consulted the guidelines” for purposes of its § 3553(a) analysis.

In *Zolp*, the Ninth Circuit also stated that “where an extremely disproportionate sentence results from the application of an enhancement, the government may have to satisfy a ‘**clear and convincing**’ standard.” 479 F.3d at 718 (emphasis added).

In this case, Mr. Hicks did receive a disproportionate sentence based on the application of enhancements. Mr. Hicks submits that under the *Apprendi-Blakely-Booker* line of cases, those enhancements should be found by a jury under a standard of beyond a reasonable doubt. Under current Ninth Circuit precedent, these enhancements must at least be established by clear and convincing evidence.

The enhancements in Mr. Hicks' case have never been judged by a clear and convincing standard. This court must accurately calculate the advisory guideline range for purposes of a § 3553(a) analysis. Although this court ordered that the probation service update Mr. Hicks' presentence report, that has not been done. The probation service filed a "Supplement to the Presentence Report" that recites the procedural history of the case, and includes a summary of Bureau of Prison records.

Mr. Hicks submits that he has a right to an updated presentence report, and that he has the right to challenge guideline enhancements under a clear and convincing standard. He requests a 72-day continuance in which he can object to the guideline enhancements and have a fair hearing on the application of those enhancements under the constitutionally-mandated standard of proof.

This motion is submitted pursuant to D. Alaska Loc. R. 47.1.

DATED at Anchorage, Alaska this 25th day of April 2007.

Respectfully submitted,

/s/Rich Curtner
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Certification:

I certify that on April 25, 2007,
a copy of the ***Aaron Hicks' Motion
to Continue Resentencing and
Request for an Updated Presentence
Report (Filed on Shortened Time)*** was
served electronically on:

John J. Novak
Assistant United States Attorney
U.S. Attorney's Office
222 West Seventh Avenue #9, Room 253
Anchorage, AK 99513-7567

and a copy was hand delivered to:

U.S. Probation & Pretrial Services
222 W. 7th Avenue, #48, Room 168
Anchorage, AK 99513-7562

/s/Rich Curtner _____